

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case No. 3:18-cr-00079
	:	
v.	:	Judge Thomas M. Rose
	:	
MICHAEL D. BUSCH (1), BUSCH'S	:	
COUNTRY CORNER, INC. (3), and	:	
AMANDA JO BUSCH (4),	:	
	:	
Defendants.	:	

**ENTRY AND ORDER DENYING MOTION FOR RELEASE PENDING
APPEAL (DOC. 151)**

This matter comes before the Court pursuant to the Motion for Release Pending Appeal (Doc. 151), filed by Defendants Michael D. Busch and Amanda Jo Busch (collectively, the “Defendants”). Defendants ask that this Court, pursuant to 18 U.S.C. § 3143(b)(1), grant them release pending appeal. Defendants argue that “[s]uch relief is appropriate because they are indisputably not flight risks and indisputably do not present any danger to the safety of the community if released, and their intended appeal is not for the purpose of delay and shall raise good faith, substantial questions of law that could lead to the reversal of their convictions.” (Doc. 151 at PAGEID # 2621.) The statutory section cited by Defendants in support of their motion states the following:

Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds—

(A) by clear and convincing evidence that the person is not likely to flee or

pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title [18 U.S.C. § 3142(b) or (c)]; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—

- (i) reversal,
- (ii) an order for a new trial,
- (iii) a sentence that does not include a term of imprisonment, or
- (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title [18 U.S.C. § 3142(b) or (c)], except that in the circumstance described in subparagraph (B)(iv) of this paragraph, the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence.

18 U.S.C. § 3143(b)(1) (emphasis added). “This statute creates a presumption against release pending appeal.” *United States v. Temponeras*, No. 20-3192, 2020 U.S. App. LEXIS 8470, at *2 (6th Cir. Mar. 17, 2020) (citing *United States v. Chilingirian*, 280 F.3d 704, 709 (6th Cir. 2002)).

Based on the record in this case,¹ the Court does not find that “the appeal … raises a substantial question of law or fact likely to result in (i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.” 18 U.S.C. § 3143(b)(1)(B); *see also United States v. Mohammad*, No. 18-4201, 2019 U.S. App. LEXIS 4171 (6th Cir. Feb. 11, 2019) (denying motion for bond pending appeal under 18 U.S.C. § 3143(b) filed by a defendant who had filed an appeal challenging his convictions for conspiracy to commit food stamp fraud and related crimes). Therefore, the Court **DENIES** the

¹ This includes, but is certainly not limited to, the reasoning and portions of the record relied upon in the Court’s “Entry and Order Denying Defendants’ Motion to Vacate Conviction” filed on April 8, 2020. (Doc. 133.)

Motion for Release Pending Appeal, filed by Defendants Michael D. Busch and Amanda Jo Busch (Doc. 151).

DONE and ORDERED in Dayton, Ohio, this Tuesday, September 29, 2020.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE